

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ANTONIO F. CARSON,

Plaintiff,

v.

CASE NO.: 05-CV-72679-DT
HON. PATRICK J. DUGGAN

THOMAS M. BIRKETT,
BARBARA MEAGHEN,
R. ERICKSON, and R. WILSON,

Defendants.

ORDER DENYING MOTION
FOR LEAVE TO FILE AN AMENDED COMPLAINT

At a session of said Court, held in the U.S.
District Courthouse, City of Detroit, County
of Wayne, State of Michigan September 6, 2005.

PRESENT: THE HONORABLE PATRICK J. DUGGAN
U.S. DISTRICT COURT JUDGE

Plaintiff Antonio F. Carson is a state prisoner at Alger Maximum Correctional Facility in Munising, Michigan. Petitioner filed a *pro se* civil rights Complaint under 42 U.S.C. § 1983 which alleged that Defendants violated Plaintiff's rights under the Eighth Amendment to the United States Constitution by failing to protect him from an assault and battery by another prisoner. Specifically, Plaintiff alleged that a prisoner with Acquired Immune Deficiency Syndrom ("AIDS") spit on Plaintiff's face, neck, chest, and stomach while the two inmates were confined in yard modules. On August 16, 2005, this Court dismissed Plaintiff's Complaint pursuant to 28 U.S.C. §§ 1915(e)(2)(b) and 1915A(b) because

Plaintiff's allegations lacked an arguable basis under law and were frivolous. Presently before the Court is Plaintiff's Motion for Leave to File an Amended Complaint, filed on August 29, 2005.

The Sixth Circuit has held that § 1915 "proscribes a district court from permitting a plaintiff to amend his complaint *after* that court has dismissed the complaint under § 1915(e)(2)." *Moniz v. Hines*, 92 Fed.Appx. 208, 212 (6th Cir. 2004) (emphasis in original) (listing cases); *see also Graham v. Mercer*, 238 F.3d 421, 2000 WL 1720972, at *2 (6th Cir. 2000) (holding that the district court did not err in denying plaintiff's motion for leave to amend the complaint after the court had dismissed plaintiff's complaint pursuant to § 1915A because plaintiff never filed a timely motion under Rule 59(e) or Rule 60(b)). In this case, Plaintiff has not filed any motion to vacate judgment pursuant to either Rule 59 or Rule 60 of the Federal Rules of Civil Procedure and this Court can see no basis for granting such motions.

Accordingly,

IT IS ORDERED that Plaintiff's Motion for Leave to File an Amended Complaint is **DENIED**.

s/PATRICK J. DUGGAN
UNITED STATES DISTRICT JUDGE

Copy to: Antonio F. Carson, #193689
Alger Maximum Correctional Facility
600 Industrial Park Drive
P. O. Box 600
Munising, MI 49862